

The California Energy Commission (Energy Commission) appreciates the opportunity to review the Governor's Office of Planning and Research's (OPR's) "Proposed Updates to the CEQA Guidelines" dated August 11, 2015. The Energy Commission has statutory responsibility for licensing thermal power plants 50 megawatts and larger in size, together with related facilities. The Energy Commission's 12-month, one-stop permitting process is a certified regulatory program under the California Environmental Quality Act (CEQA). Siting, Transmission, and Environmental Protection Division (STEP) staff bear primary responsibility for preparing assessments of proposed power plants that fall under the Energy Commission's jurisdiction, and thus play a key role in ensuring CEQA compliance.

STEP Division staff offer the following comments on the CEQA Guidelines Updates proposal, the bulk of which relate to proposed changes to Appendix G, the Environmental Checklist Form.

[Note. In the comments below, bold black ~~strikeouts~~ and underlined text are verbatim from the preliminary discussion draft. Bold red ~~strikeouts~~ and underlined text are Energy Commission staff's proposed edits.]

1. OPR is proposing to merge questions a) and b) under "1. AESTHETICS" so a) would read (page 50):

[Would the project:] a) Have a substantial adverse effect on either a scenic vista or scenic resources within a designated scenic highway?

As written, the scenic vista or scenic resource would need to be within a designated scenic highway; however, existing question b) was not limited to scenic resources within a designated scenic highway. Designated scenic vistas or scenic resources can be viewed from locations other than scenic highways, such as from recreational trails. To remedy this, Energy Commission staff offers the following edits:

a) Have a substantial adverse effect on either a designated scenic vista or scenic resources, including those within a designated scenic highway?

We also recommend that OPR clarify that this section would include either a state or locally-designated scenic vista, scenic resource or scenic highway.

2. OPR is proposing the following change to question c) under "1. AESTHETICS," which would become new question b) (page 51):

[Would the project:] ~~e) Substantially degrade the existing~~ Substantially degrade the existing visual character or quality of public views of the site and its surroundings in conflict with applicable zoning and other regulations?

This proposed revision would adversely affect the practical application of this section of the CEQA Guidelines. As the preliminary discussion draft indicates through its reference to *Bowman v. City of Berkeley* (pp. 40-41), many local planning agencies do and should have policies and ordinances that purposefully seek to improve the *appearance of urban environments* (italics added). However, many permitting agencies do not have policies and implementation measures (i.e., ordinances, guidelines) to protect public views of sites and surrounding areas. When this is the case in reviewing projects subject to CEQA, a permitting agency's discretionary judgment becomes critical in review of those projects.

As it is currently written, Appendix G, 1. AESTHETICS (c) allows for a permitting agency to either enforce local standards, if there are any, or to rely on its knowledge of and training in the technical area to identify, communicate, and mitigate potentially significant impacts to the visual character or quality of public views of sites and their surroundings. Therefore, Energy Commission staff suggests the following revision:

[Would the project:]– **~~e) Substantially degrade the existing~~ Substantially degrade the existing** visual character or quality of **public views of** the site and its surroundings **in conflict with applicable zoning and other regulations**?

3. OPR is proposing to combine III. AIR QUALITY subpart b) and c) (page 53). In this newly revised subpart b), it is not clear if the term “air quality standard” refers to ambient air quality standards or any other air quality standards. The term “air quality standard” should be clarified. If this is just meant to refer to ambient air quality standards please add the word “ambient.” If it includes air quality standards other than ambient air quality standards, please provide examples.

4. OPR is proposing new language in III. AIR QUALITY subpart e) (page 53) that removes the phrase “create objectionable (odors)” and replaces it with “frequent and substantial emissions, (such as odors, dust or haze) for a substantial duration that adversely affect a substantial number of people.” The term “substantial” is used in this sentence three different times, with potentially three different meanings as it relates to amount of emissions, the duration of such emissions, and the number of affected people. The word “substantial” should be defined or clarified.

5. At the beginning of V. CULTURAL RESOURCES (page 55) we recommend changing “Would the project:” to “Could the project:”. PRC § 21084.1 states that “a project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” As part of the initial consideration of the environmental effects of a project, the edit from “would” to “could” in the checklist—at least with regard to cultural resources—would more accurately reflect the scope of analysis implicit to the language of the statute. “Would” implies an *a priori* positive determination of a project's effects, whereas the use of “could” more appropriately broadens the scope of analysis to further consideration of whether a project “may cause a substantial adverse change.” We understand the distinction is subtle, but believe it to be substantive.

6. We suggest the following changes to new question c) (formerly question d)) under V. CULTURAL RESOURCES (page 55):

[Could the project:]—~~d) c)~~ Disturb any human remains, ~~including those~~ interred outside of ~~formal~~ dedicated cemeteries?

As worded in the preliminary discussion draft, new Cultural Resources question c) broadly considers whether the project would disturb any human remains, recent or old, in a dedicated cemetery or not. Recent human remains and human remains in a dedicated cemetery would not typically fall under the purview of a CEQA cultural resources analysis and therefore should not be referred to under the Cultural Resources category of the checklist. The treatment and disposition of recent human remains and those in a dedicated cemetery would be subject to applicable Health and Safety Code requirements.

7. By consolidating Geology and Soils, a list of specific potential hazards that should be analyzed has been lost. It is useful to remind the preparers that these potential impacts should be reviewed and analyzed if necessary. Staff proposes to add these specific impacts to item VIII. h) on page 57 and 58.

VIII. HAZARDS AND HAZARDOUS MATERIALS

[Would the project:] h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, flooding or other inundation, unstable soils, fault rupture, seismic shaking and geologic hazards such as landsliding, lateral spreading, liquefaction, tsunami, seiche, and other potential hazards ~~including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?~~

8. In light of adoption of the Sustainable Groundwater Management Act and issues identified related to the intent of its adoption staff believes items Section IX. Hydrology and Water Quality would benefit from some specificity of what impacts could occur from lowering of water levels and how water supply would be affected. Item (9)c,(v) below is also identified by the State Water Resources Control Board as ‘beneficial use’ that should be protected in watersheds which staff believes should be emphasized. Staff proposes the following additions on pages 58 through 60:

IX. HYDROLOGY AND WATER QUALITY

[Would the project:] b) Substantially ~~deplete~~ decrease groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level that would impact other users or the long term basin balance for existing and planned future uses, impact groundwater dependent vegetation, or result in or exacerbate subsidence of the aquifer, or degradation of groundwater quality, ~~(e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?~~

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

(i) result in substantial erosion or siltation on- or off-site;

(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off- site;

(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; ~~or~~

(iv) impede or redirect flood flows; ~~or~~

(v) substantially reduce infiltration that would otherwise recharge a groundwater basin?

9. OPR is proposing to consolidate a number of existing categories in Appendix G into a new category titled OPEN SPACE, MANAGED RESOURCES AND WORKING LANDSCAPES. Energy Commission staff offers the following comments on this category (page 63).

XI. OPEN SPACE, MANAGED RESOURCES AND WORKING LANDSCAPES --
Would the project adversely affect open spaces containing natural ~~or cultural~~ resources and working landscapes?

a) Adversely impact open space for the preservation of natural ~~or cultural~~ resources, including, but not limited to:

(i) habitat required for the preservation of ~~rare or sensitive plant species or fish and wildlife species, including habitat corridors;~~

(ii) waters of the state; ~~or~~

(iii) unique paleontological resource or site or unique geologic feature; ~~or~~

(iv) historical resource or unique archeological resource?

Historically, paleontological and cultural resources have been inadvertently gathered into one regulatory basket even though the resources share no thematic basis. Our edits related to cultural resources would help analysts to explicitly consider the distinct resource sets. We proposed augmenting new subpart (i) to acknowledge open spaces for the preservation of “rare or sensitive plant species.”

10. The new Section XVI. TRANSPORTATION b) (page 67) introduces the concept of “vehicle miles traveled.” We believe there needs to be some additional discussion, either here or elsewhere in the Guidelines, which clarifies how to derive the “vehicle miles traveled” metric and establish the geographic parameters for its application (i.e. city, county, region).

11. We offer the following edits under XVIII. MANDATORY FINDINGS OF SIGNIFICANCE (page 70):

a) Does the project have the potential to **substantially** degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, **substantially** reduce the number or restrict the range of a rare or endangered plant or animal or eliminate **an historical resource or unique archeological site which elucidates a significant theme in the annals important examples of the major periods** of California history or prehistory?

As written, this checklist item reads as though considerations of project effects to a single plant or animal population, or to a single population's habitat are warranted under CEQA, but consideration only need be given to cultural resources when multiple "examples of ... major periods" may be at stake. The proposed edit reduces the cultural resources threshold for consideration to a single historical resource or unique archaeological site, in line with biological considerations, and reduces potential future conflict over the delineation of "major periods" by more closely aligning the item language with the language of § 15064.5(a)(3).

12. Regarding "Question for Stakeholders" at page 78, we concur that defining language is needed for "wasteful, inefficient, and unnecessary consumption of energy." This term is used again in proposed subpart b) of Section 15126.2 at the bottom of page 78.

13. The phrase stricken below does not appear in the currently published version of Guideline Section 15155 (d) (see page 87).

(d) If a water-demand project has been the subject of a water assessment ~~for a project~~, no additional water assessment shall be required for subsequent water-demand projects that were included in such larger water-demand project if all of the following criteria are met: [...]

In addition, this phrase adds confusion to what is intended by the language in the code of regulations for large demand water projects.

14. The proposed amendment to section 15155(f)(3) on page 88 would be enhanced if it were stated in the context of potential impacts and use terminology commonly used in groundwater science and now adopted in the Sustainable Groundwater Management Act. Staff also proposes a more complete list of potential impacts that are the result of over allocation of water supply that have resulted in environmental impact. The resulting section would read as follows:

(f) The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A lead agency should have greater confidence in the availability of water supplies for a specific project than might be

required for a conceptual plan. An analysis of water supply in an environmental document shall include the following:

...
(3) An analysis of circumstances affecting the likelihood of the water's availability, as well as the degree of uncertainty involved. Relevant potential impacts that should be considered include but are not limited to subsidence, drought, water quality degradation, regulatory or contractual curtailments, use that exceeds the sustainable yield, and other reasonably foreseeable demands on the water supply that could affect the environment. ~~Relevant factors may include but are not limited to, drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.~~